



MISSOURI DEPARTMENT OF MENTAL HEALTH

KEITH SCHAFER, DEPARTMENT DIRECTOR



DEPARTMENT
OPERATING
REGULATION
NUMBER

DOR
6.143

CHAPTER	SUBCHAPTER	EFFECTIVE DATE	NUMBER OF PAGES	PAGE NUMBER
Human Resources	Personnel Administration	8/1/09	8	Page 1 of 8
SUBJECT		AUTHORITY	HISTORY	
Military Family Medical Leave		Section 630.050	See Below	
PERSON RESPONSIBLE			SUNSET DATE	
Deputy Director Admin			7/1/12	

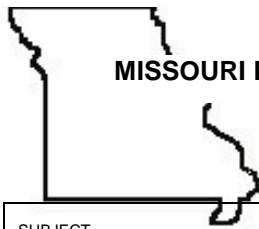
Purpose: To define the Department's policy with regard to Military Family Medical Leave.

Application: Applies to the entire department.

(1) The Family Medical Leave Act (FMLA) of 1993, as amended in 2009, makes available two types of leave to eligible employees: the General Provisions (General FMLA Leave) and Military Family Medical Leave Provisions (Military FMLA Leave). The provisions of General FMLA Leave are addressed in DOR 6.142. This DOR addresses the Military Family Medical Leave provisions.

(2) Definitions--As used in this DOR, the following terms shall mean:

- (A) "Eligible Employee" to use Military Exigency Leave or Military Caregiver Leave, an employee must be employed by the same employer for at least one (1) year and have worked at least 1,250 hours during the preceding twelve (12) month period. The State of Missouri is considered to be one employer. Military leave shall count as hours worked.
- (B) "Parent" for the purposes of *Military Caregiver Leave or Exigency Leave* means the covered service member's biological, adoptive, step or foster father or mother or any individual who stood in loco parentis to the service member and does not include parent-in-law.
- (C) "Child, son, or daughter" for the purposes of FMLA Caregiver Leave and Exigency Leave is defined as a child of any age; biological; adopted; foster or step; legal ward; or in loco parentis.
- (D) "In loco parentis" persons who stand in loco parentis include those with day to day responsibility to care for and financially support a child.
- (E) "Contingency operation" means military operations or hostilities against an enemy of the United States or against an opposing military force or any other call or order to active duty of members of the uniformed services during a war or national emergency declared by the President or Congress.
- (F) "Covered military member" is defined for the purposes of FMLA *qualifying Exigency Leave* as the employee's spouse, son, daughter, or parent who is on active duty or has been notified of an impending call or order to active duty in the Reserve components, the National Guard and certain retired members of the Regular Armed Forces and retired Reserves who are subject to a Federal call to active duty in support of a contingency operation. An employee whose family member is on active duty in support of a



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contingency operation as a member of the Regular Armed Forces is not eligible to take leave because of a qualifying exigency.

- (G) "Covered service member" is defined for purposes of *Military Caregiver Leave* as (1) a current member of the Armed Forces (including National Guard or Reserves); (2) who is undergoing medical treatment, recuperation or therapy, is otherwise on outpatient status, or is otherwise on the temporary disability retirement list; (3) for a serious injury or illness incurred by the service member in the line of duty while on active duty and that may render the service member unfit to perform the member's duties. The term "serious health condition" is not relevant for leave taken to care for a covered service member. An employee whose family member is a Veteran with a serious injury or illness incurred by the Veteran in the line of duty while on active duty is not eligible for military caregiver leave, such leave is available only to current members of the Armed Forces. Such employee may be eligible for a family member with a "serious health condition" under the terms set out for General FMLA provisions.
- (H) "Next of kin" means the service member's nearest blood relative, other than the service member's spouse, son or daughter, in the following order of priority: 1. blood relative designated in writing by the service member as his or her nearest blood relative for the purposes of military caregiver leave; 2. blood relatives who have been granted legal custody of the service member by court decree or statutory provisions; 3. brothers and sisters; 4. grandparents; 5. aunts and uncles; 6. first cousins. If there are multiple family members within the same level of relationship, all are next of kin and each can take FMLA caregiver leave. If there is a designated next of kin, he or she is the only next of kin.
- (I) "Qualifying exigency" means leave taken for any of the following reasons as are directly related to the covered military member's absence or call to duty, but excludes routine matters: (1) short notice deployment where the covered military is notified of an impending call or order to active duty seven (7) or less calendar days prior to the date of the deployment; (2) military events and related activities; (3) to make arrangements or provide for interim child care and attend school activities for a child; (4) financial and legal arrangements; (5) counseling that is non-medical in nature for the covered military member or child; (6) rest or recuperation; (7) post-deployment activities; and (8) additional duties which are approved by mutual agreement of the facility and the employee.
- (J) "Week," for a full-time employee, a week is considered to be forty (40) hours. For a part-time employee, a week is considered to be the amount of hours normally worked during a week (e.g.: 32 hours is considered a week for an 80% employee). The twelve (12) week period can be figured in hours for the purposes of intermittent leave (see below); and
- (K) "Year," for the purposes of Military Exigency FMLA, the Department defines a year as the current month and preceding eleven (11) months. For the purposes of Military Care Giver FMLA, the year is defined as a single twelve (12) month period measured forward



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from the date an employee's leave to care for the covered service member begins, although the facility uses a different twelve (12) month period for other types of FMLA leave.

(3) Types of Military FMLA Leave.

There are two types of Military FMLA Leave: Exigency Military FMLA Leave and FMLA Leave to Care for a Covered Service member.

(A) FMLA Qualifying Exigency (Exigency Leave). Employees meeting the eligibility requirements described above may be entitled to use up to twelve (12) weeks of FMLA Leave to address certain qualified exigencies as described above. FMLA Exigency Leave is drawn from the same twelve (12) week balance provided under General FMLA Leave. Exigency leave is an additional qualifying reason available to the employee to take the twelve (12) week entitlement under General FMLA; and it is not an additional twelve (12) week entitlement. Employees accessing FMLA Exigency Leave are referred to DOR 6.142 for a comprehensive accounting of rights and responsibilities in using General FMLA leave. FMLA Qualifying Exigency Leave may be used if the employee's spouse, son, or daughter is on active duty or called to active duty status in the National Guard or Reserves in support of a contingency operation.

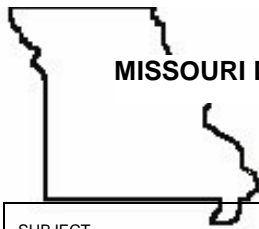
(B) FMLA Leave to Care for a Covered Service Member (Caregiver Leave). An employee who meets eligibility requirements for FMLA can take up to twenty six (26) weeks of FMLA leave to care for a covered service member during a single twelve (12) month period. The twenty six (26) week maximum in a single twelve (12) month period applies on a per covered service member, per injury/illness basis (aggravation or complication of an earlier injury or illness is still the same injury or illness).

A covered service member is a current member of the Armed Forces, including a member of the National Guard or Reserves who has been determined unfit to perform his or her duties due to a serious injury or illness incurred in the line of duty while on active duty that may make the service member medically unfit to perform his or her duties for which the service member is undergoing medical treatment, recuperation, or therapy; or is in outpatient status; or is on the temporary disability retirement list.

FMLA Caregiver Leave is available to the spouse, son or daughter, parent or next of kin of the covered service member.

When both husband and wife work for the same employer, the aggregate amount of leave that can be taken by the husband and wife to care for a covered service member is twenty six (26) weeks in a single twelve (12) month period.

(4) When Both Military Caregiver FMLA and General FMLA Apply



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During the single twelve (12) month period under Military Caregiver FMLA, the Caregiver leave is combined with General FMLA leave and the total cannot exceed twenty six (26) weeks.

If leave qualifies as both Military Caregiver FMLA and General FMLA for leave to care for a family member with a Serious Health Condition, it must be counted as Military Caregiver FMLA. It may not be counted as both Military Caregiver FMLA and General FMLA.

(5) Use of Leave During Military Family Medical Leave (Exigency Leave and Caregiver Leave)

- (A) During a period of Military FMLA, (the employee will use accumulated sick, annual, state and federal compensatory time, and holiday leave in accordance with facility policy until the leave balance is exhausted. After those leave balances are exhausted, the employee will be placed on leave without pay.
- (B) An employee does not need to use Military FMLA leave in one block of time. Leave can be taken intermittently or on a reduced leave schedule when medically necessary. Intermittent leave or leave taken due to a reduced schedule, will only reduce the total amount of Family Medical Leave time by the amount actually taken. At the facility's discretion, in cases of foreseen leave and planned medical treatment (under FMLA Military Caregiver Leave) an employee may be required to transfer to another position.

(6) Notice Requirement (Exigency Leave and Caregiver Leave)

(A) Notice of Employee Eligibility for FMLA

The facility notifies the employee of whether or not the employee is eligible for FMLA within five (5) business days of an employee's request for FMLA or within five (5) business days of the facility's awareness that the employee's leave may qualify for FMLA. This notice is given to the employee at the beginning of the first potentially qualifying FMLA event of the year.

(1) If the employee has a subsequent need for FMLA during that same year, the facility will not provide another notice of eligibility unless the employee's eligibility status has changed;

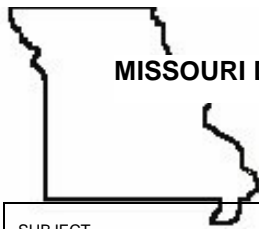
(2) If the employee's eligibility status has changed, the facility will notify the employee of the change within five (5) business days.

(B) Designation Notice

The employee receives a Designation Notice within five (5) business days after the facility has enough information to determine whether or not the condition is FMLA qualifying.

(C) Employee Notice of Need to Use Military FMLA

For Military Caregiver FMLA, the employee is required to give a thirty (30) day notice in the event of a *foreseeable need* or as soon as practicable (normally the same or next business day) if the employee was off work when he/she needed to use the leave.



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(1) If the need is foreseeable, and the employee gives less than a thirty (30) day notice, the facility may require an explanation if less than a thirty (30) day notice is given.

(2) If employee fails to give thirty (30) day notice for a foreseeable need with no reasonable excuse for the delay, the period of the delay will be considered a non-FMLA protected absence.

(3) If timely notice is not given, the period of delay counts as non-FMLA absence.

If the need for leave is *unforeseeable*, the employee must give notice as soon as practicable, verbal notice within one (1) or two (2) days of when the need for leave becomes known, followed by a completed Request for Family Medical Leave form. If timely notice is not given, the period of delay counts as non-FMLA absence.

(7) Applying for and Scheduling Leave (Exigency Leave and Caregiver Leave)

(A) In all circumstances, the employee must follow local facility policies and procedures for notifying supervisory staff of expected or unexpected absences.

(B) Leave taken under the Family Medical Leave Act shall begin with the first designated absence.

(C) An employee requesting Family Medical Leave Act must complete the appropriate facility documents and return them to the appropriate person designated by the facility. The documents must state the reason for the leave, the duration of the leave, and the starting and ending dates of the leave.

(8) Military FMLA Certifications

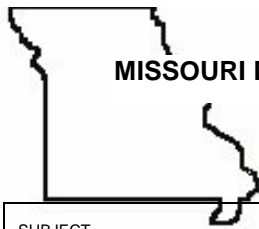
(A) Exigency Leave Certifications and Military Caregiver Leave Certifications

(1) For *Exigency FMLA*, the facility will issue an employee a Certification for Qualifying Exigency for Military Family leave within five (5) business days after a foreseeable leave is requested; or within five (5) business days after unforeseeable leave starts; or at a later date if the facility has reason to question the appropriateness or duration of the leave.

(a) For the first request of FMLA Exigency leave, the facility requires proof of the exigency through a Certification of Qualifying Exigency for Military Family leave. A separate certification may be required for each exigency.

(b) The facility only requires one Certification for a series of related activities to a single exigency (e.g. a child's school activities would be one exigency; a series of related parent-teacher conferences would not require another Certification).

(2) For the first request of *Exigency FMLA*, the facility will also require documentation of active duty status or call to active duty status, for a specific military member. But the facility will not require the same documentation again during the same call to active duty for the same military member. For subsequent requests for exigency



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leave arising out of a different active duty or call to active duty status or for a different military member, the facility will require a new Certification of Active Duty.

(3) For *Military Caregiver FMLA*, the facility will issue an eligible employee a Certification for Serious Injury or Illness of Covered Service member within five (5) business days after the foreseeable leave is requested or within five (5) business days after unforeseeable leave starts; or at a later date if the facility has reason to question the appropriateness or duration of the leave.

(a) For the first time request for FMLA caregiver leave due to a specific serious injury or illness to a specific service member, the facility will require proof of the serious injury or illness through a Certification of Serious Injury or Illness of Covered Service member. Aggravation of an injury or illness or complications arising out of the specific injury or illness are considered the same serious injury or illness.

(b) For a subsequent request for caregiver leave arising out of a different serious injury or illness or a serious injury or illness to a different service member, the facility may require proof of the serious injury or illness through a Certification of Serious Injury or Illness of Covered Service member.

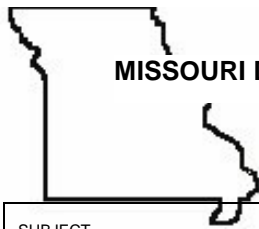
(4) For a first time request for *Military Caregiver FMLA*, the facility will require proof of the service member's military status. The facility will not request the same information again for the same injury or illness of the same service member. But for subsequent requests arising out of a different serious injury or illness of the same service member, the facility will require proof of military status.

(5) For both *Exigency FMLA* and *Military Caregiver FMLA*, the employee will be given fifteen (15) calendar days to return the completed Certification and documentation of the covered military member or service member's military status. The fifteen (15) calendar day period applies regardless of whether the leave is foreseeable or unforeseeable, unless it is not practicable to do so despite the employee's diligent, good faith efforts.

(a) If the Certification is not returned at all within fifteen (15) calendar days and the employee has not provided information about his or her diligent, good faith efforts, the facility can deny FMLA leave.

(b) If the Certification is returned but is incomplete or insufficient, the facility provides written notice of what specific information is still needed and gives the employee seven (7) calendar days to resolve the deficiencies.

(c) If the Certification is not returned at all within the seven (7) calendar days and the employee has not provided information about his or her diligent, good faith efforts or if the Certifications are returned within the seven (7) calendar days and still does not resolve the deficiencies, the facility can deny FMLA leave.



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(9) Benefit Coverage During Leave

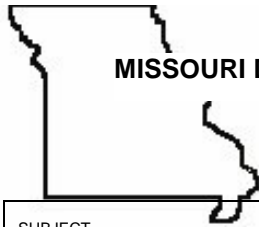
- (A) During a period of Family and Medical Leave, the employee will be retained in the Missouri Consolidated Health Care Plan under the same conditions that applied before leave commenced. If the employee enters into a leave of absence without pay, the employee must continue to make any contributions that he or she made to the plan before taking leave to continue health coverage (e.g. health insurance for family).
- (B) Employee contribution amounts are subject to any change in rates that occur while the employee is on leave. Failure of the employee to pay his or her share of the health insurance premium will result in loss of coverage.
- (C) The employee is not entitled to benefit accrual during period of unpaid leave but will not lose anything accrued prior to leave.

(10) Return from Leave

- (A) Before the employee returns to work from Family Medical Leave for their own serious health condition, the facility will require the employee to submit a Fitness for Duty Certification whenever a Fitness for Duty Certification was requested in the FMLA Designation Notice.
- (B) Employees returning from Family Medical Leave will be returned to the same or equivalent position. An equivalent position is defined as the same job title with the same pay, the same or similar work duties, the same work location, and the same shift and days off.
- (C) In the event of any activity affecting all employees or employees in the same class as the employee on Family Medical Leave (such as cost of living or layoff), the employee will return to work with such benefits or in a position consistent with the result as if the employee had been on duty at that time.

(11) Failure to Return from Leave

- (A) If the employee is unable to return from Family Medical Leave, the employee may request further use of sick or other paid leave or a leave of absence without pay. Such leave requests must be made prior to the expiration of the employee's approved Family Medical Leave, and in accordance with facility policy. The appointing authority will determine if further leave beyond the maximum hour entitlement under FMLA will be granted. The failure of the employee to return to work upon the expiration of Family Medical Leave without authorization as described above will be considered unauthorized absence and may result in disciplinary action up to and including dismissal.
- (B) If the employee fails to return to work after the expiration of the leave, the employee will be required to reimburse the state for payment of health insurance premiums during any unpaid Family Medical Leave, unless the reason the employee



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fails to return is: (1) the presence of a serious health condition which prevents the employee from performing his or her job; or (2) due to circumstances beyond the employee's control. Certification is required within thirty (30) days of failure to return for either reason listed above.

(12) Failure to comply or assure compliance with the provisions of the Department Operating Regulation may be cause for disciplinary action up to and including dismissal.

History: Original DOR effective August 1, 2009.